

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GALE MATTHEWS-BENSON,

Plaintiff,

vs.

TOWN OF CHEEKTOWAGA,
CHEEKTOWAGA POLICE DEPARTMENT,
POLICE OFFICER BRIAN R. GRAY

Defendants.

NOTICE OF REMOVAL

Index No.: I-2008-13441

Defendants, Town of Cheektowaga, Town of Cheektowaga Police Department, and, Police Officer Brian R. Gray, hereby serve notice of the removal of this civil action to the United States District Court for the Western District of New York, pursuant to 28 U.S.C. §1331, §1441 and §1443 and in support thereof states as follows:

1. On or about December 12, 2008, plaintiff, Gale Matthews-Benson, commenced an action against defendants by filing a complaint in the Supreme Court for the State of New York, Erie County, docketed as Index No. I-2008-13441. Copies of plaintiff's summons and complaint are attached hereto as **Exhibit A and B**, respectively. To the best of defendants' knowledge, the summons and complaint are the only documents which were filed in the Supreme Court of the State of New York in the County of Erie.

2. The summons and complaint purportedly were served on the defendants, Town of Cheektowaga, Town of Cheektowaga Police Department, Police Brian R. Gray, on or about December 16, 2008.

3. The complaint identifies plaintiff, Gale Matthews-Benson, as an individual residing in Antioch, California.

4. Plaintiff's complaint alleges that the defendants, Town of Cheektowaga, Town of Cheektowaga Police Department, and, Police Officer Brian R. Gray, "while acting under color of law in their official capacity, deprived the plaintiff, Gale Matthews-Benson, of the privileges and immunities guaranteed to every citizen of the United States including plaintiff, by the United States Constitution Amendments 4, 5, 7, 8 and Section 1 of Amendment 14."

5. In addition, the complaint alleges that "as a result of the aforesaid actions, the plaintiff, Gale Matthews-Benson, was deprived of the rights and privileges secured and protected to her by the Constitution and the Laws of the United States; was falsely arrested, unlawfully searched, falsely imprisoned, maliciously prosecuted and unconstitutionally deprived of her liberty and otherwise tortiously and maliciously harmed by the actions of the defendants, Town of Cheektowaga, Town of Cheektowaga Police Department, and, Police Officer Brian R. Gray, while acting under color of law, in their official capacity, in arresting and detaining the plaintiff against her will, and without just cause or reason, all in violation of Title 42 of the United States Code, § 1983 et seq., and has suffered extreme humiliation and emotional anguish, was injured in her good name, reputation and standing in the community, and was caused to and did incur great expense, including legal expenses.

6. The above-described language indicates that this Court has original jurisdiction under the provisions of Title 28 United States Code §1331.

7. This action is removable pursuant to 28 USC §1441.

8. Attached as **Exhibit C** is an index of documents filed in the Supreme Court for the State of New York in the County of Erie.

WHEREFORE, defendants, Town of Cheektowaga, Town of Cheektowaga Police Department, Police Officer Brian R. Gray, pray that the above action now pending against them

in the Supreme Court for the County of Erie, State of New York, be removed to the United States District Court for the Western District of New York.

DATED: Buffalo, New York
January 12, 2009

By: /s/ Marylou K. Roshia

Marylou K. Roshia, Esq.
Damon & Morey LLP
Attorneys for Defendants
Town of Cheektowaga,
Town of Cheektowaga Police
Department
and Police Officer Brian R. Gray
1000 Cathedral Place
298 Main Street
Buffalo, New York 14202-4096
Telephone: (716) 856-5500

TO: Michael P. Stuermer, Esq.
LIPSITZ GREEN SCIME CAMBIRA, LLP
Attorneys for Plaintiff
Office and Post Office Address
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
(716) 849-1333

CERTIFICATION AND AFFIRMATION OF SERVICE AND FILING

I, Marylou K. Roshia, Esq., certify and affirm that on the 12th day of January, 2009 a Notice of Removal, with exhibits was filed with the Clerk of the United States District Court for the Western District of New York, and a true copies thereof sent via U.S. Mail to the plaintiff's counsel's office at the address listed below and a true copy thereof was filed with the Erie County Clerk's Office.

/s/ Marylou K. Roshia

Marylou K. Roshia, Esq.

TO: Michael P. Stuermer, Esq.
LIPSITZ GREEN SCIME CAMBIRA, LLP
Attorneys for Plaintiff
Office and Post Office Address
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
(716) 849-1333

-#1295922

EXHIBIT A

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

GALE MATTHEWS-BENSON
5437 San Martin Way
Antioch, California 94531,

Index No. 1-2008-13441

Plaintiff designates Erie
County as the place of trial

vs.

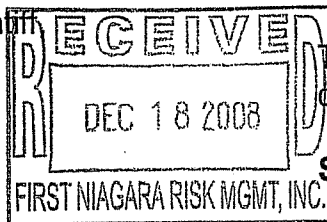
TOWN OF CHEEKTOWAGA
3301 Broadway
Cheektowaga, New York 14227,

CHEEKTOWAGA POLICE DEPARTMENT
3301 Broadway
Cheektowaga, New York 14227,

and

POLICE OFFICER BRIAN R. GRAY
3301 Broadway
Cheektowaga, New York 14227,

Plaintiff



The basis of venue is
defendants' place of business

SUMMONS

Defendants' place of business
is at 3301 Broadway
Cheektowaga, New York

County of Erie

CHEEKTOWAGA TOWN CLERK
RECEIVED

DEC 16 2008

AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

Defendants.

FILED
ACTIONS & PROCEEDINGS

DEC 12 2008


ERIE COUNTY
CLERK'S OFFICE

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED, to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the plaintiff's attorneys within TWENTY (20) DAYS after the service of this Summons, exclusive of the day of service (or within THIRTY (30) DAYS after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

DATED: Buffalo, New York
December 12, 2008

LIPSITZ GREEN SCIME CAMBRIA LLP

By: 
MICHAEL P. STUERMER, ESQ.

Attorneys for Plaintiff
Office and P.O. Address
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
(716) 849-1333
[MPS : #48896.0002]

EXHIBIT B

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

GALE MATTHEWS-BENSON
5437 San Martin Way
Antioch, California 94531,

Plaintiff,

COMPLAINT

vs.

Index No.

TOWN OF CHEEKTOWAGA
3301 Broadway
Cheektowaga, New York 14227,

CHEEKTOWAGA POLICE DEPARTMENT
3301 Broadway
Cheektowaga, New York 14227,

and

POLICE OFFICER BRIAN R. GRAY
3301 Broadway
Cheektowaga, New York 14227,

Defendants.

FILED
ACTIONS & PROCEEDINGS

DEC 12 2008

ERIE COUNTY
CLERK'S OFFICE

Plaintiff, above named, by her attorneys, LIPSITZ GREEN SCIME CAMBRIA
LLP, for her Complaint against the defendants, alleges:

**AS AND FOR A CAUSE OF ACTION, AGAINST
DEFENDANTS ABOVE NAMED, THE PLAINTIFF GALE
MATTHEWS-BENSON, ALLEGES:**

1. The plaintiff, GALE MATTHEWS-BENSON, at all times hereinafter
mentioned was and still is a resident of the City of Antioch located within the County of
Contra Costa and the State of California.

2. Upon information and belief, at all times hereinafter mentioned, the defendant, POLICE OFFICER BRIAN R. GRAY, was and still is a resident of the County of Erie and the State of New York.

3. Upon information and belief, the defendant, TOWN OF CHEEKTOWAGA is a municipal corporation duly organized and existing under and pursuant to the laws of the State of New York.

4. Upon information and belief, the defendant, CHEEKTOWAGA POLICE DEPARTMENT, is a municipal corporation duly organized and existing under and pursuant to the laws of the State of New York.

5. Upon information and belief, at all times herein mentioned, defendant, POLICE OFFICER BRIAN R. GRAY, was employed by the defendants, CHEEKTOWAGA POLICE DEPARTMENT and/or TOWN OF CHEEKTOWAGA, and was vested with powers and duties as a police officer of said defendants, and was acting within the scope of his employment.

6. This action arises under the provisions of the Fourteenth Amendment of the United States Constitution and Title 42 United States Code §1983 et seq.

7. Upon information and belief, while acting under color of law, in their official capacities, the TOWN OF CHEEKTOWAGA, CHEEKTOWAGA POLICE DEPARTMENT and POLICE OFFICER BRIAN R. GRAY, deprived the plaintiff, GALE MATTHEWS-BENSON, of the privileges and immunities guaranteed to every citizen of the United States, including the plaintiff, by the United States Constitution Amendments 4, 5, 7, 8 and Section 1 of Amendment 14.

8. On or about the 15th day of September 2007, at approximately 12:31 a.m. at the McDonald's Restaurant parking lot, located at 1735 Walden Avenue, in the Town of Cheektowaga, County of Erie and State of New York, the defendants, TOWN OF CHEEKTOWAGA, CHEEKTOWAGA POLICE DEPARTMENT and POLICE OFFICER BRIAN R. GRAY, falsely arrested the plaintiff and charged her with grand larceny in the fourth degree and criminal possession of a controlled substance in the seventh degree.

9. Subsequent thereto, said charges against the plaintiff, GALE MATTHEWS-BENSON, were dismissed by the Cheektowaga Town Court.

10. Upon information and belief, at the time of plaintiff's arrest, the defendants well knew that the accusations made about the plaintiff were false.

11. Upon information and belief, as a result of the foregoing, the plaintiff, GALE MATTHEWS-BENSON, was falsely arrested, unlawfully imprisoned, maliciously prosecuted and unconstitutionally deprived of her liberty and otherwise tortiously and maliciously harmed by the actions of the defendants, TOWN OF CHEEKTOWAGA, CHEEKTOWAGA POLICE DEPARTMENT and POLICE OFFICER BRIAN R. GRAY, while acting under color of law, in their official capacity, in arresting and detaining the plaintiff against her will, and without just cause or reason.

12. At all times hereinafter mentioned, the defendants, TOWN OF CHEEKTOWAGA, CHEEKTOWAGA POLICE DEPARTMENT, and POLICE OFFICER BRIAN R. GRAY, individually and collectively acted without any just cause or provocation, and under the color of their authority, and did same with improper, illegal and unconstitutional motives and intents.

13. Upon information and belief, as a result of the foregoing, the plaintiff, GALE MATTHEWS-BENSON, was deprived of the rights and privileges secured and protected to her by the Constitution and the Laws of the United States; was falsely arrested, unlawfully searched, falsely imprisoned, maliciously prosecuted, and unconstitutionally deprived of her liberty and was otherwise tortiously and maliciously harmed by the actions of the defendants, TOWN OF CHEEKTOWAGA, CHEEKTOWAGA POLICE DEPARTMENT and POLICE OFFICER BRAIN R. GRAY, all in violation of Title 42 United States Code § 1983 et seq., and has suffered extreme humiliation and emotional anguish, was injured in her good name, reputation and standing in the community, and was caused to and did incur great expense, including legal expenses.

14. Heretofore, and on or about the 7th day of December, 2007, a Notice of Claim was served on behalf of the plaintiff upon TOWN OF CHEEKTOWAGA, CHEEKTOWAGA POLICE DEPARTMENT and POLICE OFFICER BRIAN R. GRAY, in duplicate, which Notice of Claim set forth the name and post office address of GALE MATTHEWS-BENSON, claimant, the name and post office address of her attorneys, the nature of the claim, the time when, the place where, and the manner in which the claim arose, together with the items of damages and injuries then known to exist, and the said Notice of Claim was served upon TOWN OF CHEEKTOWAGA, CHEEKTOWAGA POLICE DEPARTMENT and POLICE OFFICER BRIAN R. GRAY, within ninety (90) days of the date upon which the claim arose. At least thirty (30) days have elapsed since the service of the Notice of Claim, as aforesaid, and TOWN OF CHEEKTOWAGA,

CHEEKTOWAGA POLICE DEPARTMENT and POLICE OFFICER BRIAN R. GRAY, have failed and neglected to adjust or pay the said claim.

15. This action falls within one or more of the exceptions set forth in CPLR § 1602.

16. As a result of the foregoing, the plaintiff has sustained general and special damages in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, the plaintiff demands judgment against the defendants, above named, either jointly or severally, in the First Cause of Action in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; and for such other, further or different relief as the Court may deem just and proper, together with the costs and disbursements of the action.

DATED: Buffalo, New York
December 12, 2008

LIPSITZ GREEN SCIME CAMBRIA LLP

By: 

MICHAEL P. STUERMER, ESQ.

Attorneys for Plaintiff
Office and Post Office Address
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
(716) 849-1333
[MPS: # 48896.0002]

EXHIBIT C

INDEX OF DOCUMENTS
FILED IN THE SUPREME COURT FOR THE
STATE OF NEW YORK, ERIE COUNTY

Pursuant to Rule 81(a)(3)(A) of the Civil Procedure for the United States District Court for the Western District of New York, the following is an index of documents filed in Supreme Court of the State of New York for the County of Erie:

- (1) Summons, date of filing December 12, 2008; and
- (2) Complaint, date of filing December 12, 2008.

DATED: Buffalo, New York
January 9, 2009

By: /s/ Marylou K. Roshia

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